IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CENTRAL EXCISE REFERENCE NO. 9 OF 2003

The Commissioner Central Excise, Nagpur
Vs.
The Customs Excise and Gold (Control) Appellate Tribunal & Ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : J. P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
JUNE 28, 2007.

Heard Shri Mirza, learned counsel for the applicant – revenue.

The Commissioner of Central Excise, Nagpur, has filed this reference application (wrongly numbered as Central Excise Reference) under Section 35 H (1) of the Central Excise Act, 1944, against the order of CESTAT dated 5.12.2002.

The dispute in this reference application relates to classification of the products known as Popular Tea Mixture (PTM) and Popular Tea Recipe (PTR) manufactured by the respondent Nos. 2 & 3.

In this case two show cause notices

dated 8.2.2000 and 28.4.2000 were issued by the Director General of Anti Evasion to the respondent Nos. 2 & 3, calling upon them to show cause as to why the PTM and PTR manufactured by them should not be classified under Tariff Heading 2101.20 of the Central Excise Tariff Act, 1985. The respondent Nos. 2 & 3 objected to the assessment. However, by two orders in original both dated 8.11.1990, the Commissioner of Central Excise held that both PTM & PTR are classifiable under Tariff Heading 2102.20.

On appeal filed by the respondent Nos. 2 & 3, the Tribunal by a common order dated 5.12.2002, set aside the orders in original on the ground that the goods in question were approved classification under Sub-heading 0902 by the Superintendent of Central Excise and in fact a show cause notice has been issued on 9.11.1999 by the Assistant Commissioner of Central Excise, Nagpur, proposing to modify the classification from Sub-heading 0902 to sub-heading 2102.20.

The Tribunal held that during the pendency of the said show cause notice dated 9.11.1999, the Director General of the Anti

Evasion Wing could not have issued two show cause notices dated 8.2.2000 and 8.4.2000.

Admittedly, the show cause notice issued on 9.11.1999 purporting to modify the classification of PTM and PTR from the Tariff Sub-heading 0902 to sub-heading 2102.20 is still pending.

The Director General of the Anti Evasion Wing may have power to issue show cause notice in an appropriate case. But in the facts of the present case, the Tribunal has held that during the pendency of the show cause notice issued by the jurisdictional Assistant Commissioner seeking to modify the approved classification, it was not open to the Director General, Anti Evasion, to issue show cause notice ignoring the pending show cause notice. Such an order passed by the Tribunal does not give rise to any substantial question of law.

Accordingly, the reference application filed by the revenue is dismissed. No order as to costs.

JUDGE **JUDGE**

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